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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. [redacted] 116

GENERAL LONGSHORE WORKERS,
I.L.A. LOCAL UNION # 1418, ET AL,
Petitioners,

versus

NEW ORLEANS STEAMSHIP ASSOCIATION,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

ALVIN J. LISKA,
Attorney for Petitioners,
Local # 1418,
2-W-23, City Hall,
New Orleans, Louisiana 70112.

VICTOR H. HESS, JR.,
Attorney for Petitioners,
Local # 1419
1411 Decatur Street,
New Orleans, Louisiana

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To The Honorable The Supreme Court of The United States of America and The Chief Justice and Associate Justices Thereof:

General Longshore Workers, I.L.A. Local Union #1418 and General Longshore Workers, I.L.A. Local Union #1419 seeks a writ of certiorari to review a final decree of the United States Court of Appeals for the Fifth Circuit rendered on the 26th day of January, 1968, overruling the judgment of the United States District Court for the Eastern District of Louisiana, maintaining a plea to the jurisdiction.

I.

OPINIONS BELOW

The United States Court of Appeals for the Fifth Circuit overruled the United States District Court for the Eastern District of Louisiana. The opinion of the District Judge and his action on motions are annexed hereto as Appendix "C". To the best of Petitioner's knowledge, said decision has not been reported officially.

The opinion and decree of the Court of Appeals for the Fifth Circuit, sub. noma., *New Orleans Steamship Association vs. General Longshore Workers, I.L.A. Local Union No. 1418, et al,* is reported in 389 F. 2d 369, and is annexed hereto as Exhibit "A".

The per curiam decree of the United States Court of Appeals for the Fifth Circuit denying rehearing has not been reported and is annexed hereto as Appendix "B".

II.

JURISDICTION

(a) The aforementioned final decree of the United States Court of Appeals for the Fifth Circuit was entered on January 26, 1968, the day of rendition.

(b) Rehearing was applied for and denied on the 12th day of March, 1968.

(c) On the 18th day of March, 1968, an order was rendered, staying the mandate for a period of thirty days, to and including the 17th day of April, 1968.

On the 22nd day of April, 1968, an Order was rendered staying the mandate for an additional period of thirty days, to and including the 22nd day of May, 1968.

(d) The jurisdiction of this Court is invoked under

U.S.C., Section 1254 (1) because the decision rendered by the United States Court of Appeals involves a federal question decided in a way in conflict with applicable decisions of this Court.

III.

QUESTIONS PRESENTED

Whether Federal Courts have jurisdiction to enjoin a labor organization from engaging in a strike or work stoppage, actual or prospective, by the enforcement of the award of an arbitrator, in view of the Norris LaGuardia Act (29 U.S.C.A. Section 101, et seq.).

Whether an arbitrator can issue an award under a labor contract which, on its face, is unenforceable in the Federal Courts, because of the Federal Court's lack of jurisdiction to issue restraining orders under the Norris-LaGuardia Act (29 U.S.C.A. 101, et seq.).

Whether an arbitrator's award, ordering a union to cease and desist from work stoppages or strikes "in violation of their contract" in the future, can or should be enforced by an order by a mandatory injunction of the Federal Courts.

IV.

STATUTES INVOLVED

This case involves Section 301 of the National Labor Relations Act, as amended 29 U.S.C.A. 141, et seq. and the Norris LaGuardia Act, Section 101, et seq.

V.

STATEMENT OF THE CASE

General Longshore Workers Local Union No. 1418 and General Longshore Workers Local Union No. 1419 (hereinafter referred to as the "Union") are labor organi-

zations, and together represent all longshoremen in the Port of New Orleans. The New Orleans Steamship Association (hereinafter referred to as "Association") represents employers who employ the longshoremen represented by the Union, which longshoremen load and unload cargo in the Port of New Orleans. The Union and the Association have for many years negotiated and entered into collective bargaining agreements. Those agreements material herein have contained a clause prohibiting strikes and work stoppages, and providing for a grievance and arbitration procedure.

On October 5, 1965, the Association alleged that a series of work stoppages had occurred and requested that the arbitrator (selected from a panel of arbitrators set up in the collective bargaining agreement) call a hearing on these allegations. The hearing began October 8th, 1965, and ran for a period of four (4) days. During the hearing, the Union contested all matters. Subsequently, the arbitrator issued a decision and award, in which he directed that the Union cease and desist from work stoppages in violation of the contract.

On March 16, 1966, the Association filed the complaint herein, based upon alleged violation of the arbitrator's cease and desist award, and claiming a violation of the contract thereby. The action was based upon Section 301 of the Labor-Management Relations Act.

On March 23, 1966, the Association filed a motion for a mandatory injunction seeking to enjoin the unions from work stoppages and to require them to abide by the cease and desist order of the arbitrator. The Union filed a motion to dismiss on April 11, 1966.

On February 27, 1967, the District Court denied the

Association's motion for mandatory injunction and granted the Union's motion to dismiss the complaint.

The Association filed an appeal in the United States Court of Appeals for the Fifth Circuit on May 8, 1967. After briefs and argument, the Court of Appeal overruled the District Court and remanded the case. In so ruling, the Court of Appeals held that *Sinclair Refining Company vs. Atkinson*, 370 U.S. 196, 8 L. Ed. 2d 440, 82 S. Ct. 1328 (1962) was not applicable because of the intervening arbitrator's award; and, so holding, the Court likewise held that the provisions of the Norris LaGuardia Act were not applicable because the District Court was not enjoining peaceful picketing but was merely enforcing an award of an arbitrator.

The issues in the instant case are strikingly similar to those raised in *International Longshoremen's Assn. v. Philadelphia Marine Trade Association*, ... U.S. ....., ... L. Ed. 2d ....., 88 S. Ct. 201 (1967).

VI.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

A.

Sinclair Refining Company vs. Atkinson Case

In the *Sinclair* case, the employer alleged that over a period of nineteen (19) months, the Union had engaged in nine (9) separate strikes, each of which, the employer claimed, grew out of a grievance which could have been submitted to arbitration under the contract and, therefore,

fell squarely within the Union's promise not to strike. In the instant case, the employer made similar allegations before an arbitrator.

In the *Sinclair* case, the employer sought an injunction directly from the Federal Court. In the instant case, the employer sought, first, a cease and desist order from the arbitrator, which it obtained, and, then, sought an injunction in the Federal District Court enforcing the arbitrator's cease and desist order.

In the *Sinclair* case, the District Court, the Court of Appeal, and the Supreme Court, all refused the Company's request for an injunction, holding that the Norris-LaGuardia Act divested the Federal Courts of jurisdiction in issuance of the injunction sought.

In the instant case, the employer has sought to circumvent the plain language, the clear language, and the unambiguous language of *Sinclair* by, first, proceeding to arbitration and obtaining a cease and desist order which, in effect, is an injunction, and then going into Court and asking the Federal District Court to issue a mandatory injunction enforcing the arbitrator's injunction.

However one looks at it, it is inescapable that the Federal Court is enjoining workers' concerted activities for the purpose of "other mutual aid or protection".

Likewise, the language of *Sinclair* is clear that the Norris LaGuardia Act prohibits a Federal Court from issuing such an order. The Court in *Sinclair* stated:

> "In the first place, even the general policy declarations of § 2 of the Norris-LaGuardia Act, which are the foundation of this whole argument, do not support the conclusion urged. That section does not

> purport to limit the Act to the protection of collective bargaining but, instead, expressly recognizes the need of the anti-injunction provisions to insure the right of workers to engage in 'concerted activities for the purpose of collective bargaining **or other mutual aid or protection.**' Moreover, the language of the specific provisions of the Act is so broad and inclusive that it leaves not the slightest opening for reading in any exceptions beyond those clearly written into it by Congress itself.
>
> We cannot ignore the plain import of a congressional enactment, particularly one which, as we have repeatedly said, was deliberately drafted in the broadest of terms in order to avoid the danger that it would be narrowed by judicial construction." (370 U.S. at 202-203, 82-A S. Ct. at 1332-1333)

Arguments were raised in *Sinclair* similar to arguments raised here, and also posed by the Court of Appeals. In short, its arguments are that if a Union can be free to violate the "no strike" clause, then clauses requiring arbitration and prohibiting strikes are hollow contractual rights of an employer. The first answer to such arguments is that the Norris-LaGuardia Act has been on the books for thirty-five (35) years and all parties are now and have been aware of it and its implications in collective bargaining. The history of arbitration during that time shows that this is indeed a spurious argument. Arbitration has grown and, in the last ten (10) years, has become a permanent fixture in labor relations in this country. There is no evidence that it is weakening. Decisions of Federal and State courts show that arbitration is becoming stronger; and the fact of arbitration has become accepted in industrial conflicts.

The second answer to such an argument is that Congress, which has written, during the life of the Norris-

LaGuardia Act, much labor legislation to correct evils that it found, has not found it necessary or desirable as of this date, to limit the application of Norris-LaGuardia in the area concerned here; that is, strikes in violation of labor agreements. The Supreme Court, in *Sinclair* and in other cases (*United States vs. Hutchison*, 312 U.S. 219, 85 L. Ed. 2d 440, 61 S. Ct. 463) (1941) has continued to give a broad interpretation to the Norris-LaGuardia Act and at no time has Congress seen fit to change that interpretation by legislative act.

The third answer to the arguments set out above is that an employer does have available direct and strong means of protecting itself from strikes in violation of a collective bargaining agreement. Instigating employees can be discharged, or otherwise disciplined. Other employees can likewise be disciplined. Employers may, through arbitration or court action, seek damages. These are only two of the means which are available to an employer. There are others.

We submit that *Sinclair* must not be circumvented, or its holding narrowed, merely because an arbitrator was the first to issue an injunction.

We submit that the plain meaning of the Norris-LaGuardia Act, as interpreted by the *Sinclair* case, must stay until and unless Congress decides otherwise.

B.

Philadelphia Marine Trade Association Case

This case is similar in many respects to the instant case. In the cited case, an arbitrator had decided an issue adversely to the Union. A series of work stoppages occurred, which the employer claimed were in violation of

the arbitrator's award, as well as the contract. The employer successfully sought an award in the Federal District Court. Subsequently, certain persons were held to be in contempt of the Court's injunction order. When the contempt case got to the Supreme Court, many thought that the Norris-LaGuardia issue would be answered. The Court, however, in considering the case, held that the District Court had issued an injunction which was too vague to be understood and, indeed, the Court described the decree as unintelligible. The employer here has obtained from the arbitrator such an award and now seeks to have that framed by a mandatory injunction of the Federal Court. The arbitrator's award orders the unions, their officers, agents, representatives, and members "to cease and desist from work stoppages in violation of their contract with the Association" (Appendix "C"). We submit it is impossible for such an award to be enforced and that a Court's mandatory injunction enforcing such an award cannot comply with Rule 65 (d) of the Federal Rules of Civil Procedure.

Indeed, the wisdom of the Norris-LaGuardia Act in the *Sinclair* case becomes more apparent when it is understood that such awards, injunctions, or injunctions enforcing awards, are impossible to frame prospectively. It may well be argued that an award or an injunction can stop acts then being committed, when such acts are in the nature of a strike or work stoppage in violation of a contract; but, when one attempts to frame an award or an injunction to prohibit prospective acts "in violation of the contract", the difficulties mount, and it soon becomes clear that each case must stand on its own. If such orders are enforced, it will mean placing the Federal District Courts in place of the arbitrators, and having to decide questions which the Supreme Court has held must be left to the arbitrator.

II. THE QUESTIONS PRESENTED BY THE PETITION ARE OF MAJOR SIGNIFICANCE IN THE ADMINISTRATION OF THE NATIONAL LABOR LAWS AND AFFECT BASIC INTERPRETATION OF COLLECTIVE BARGAINING AGREEMENTS.

The questions are of major significance because they affect practically every collective bargaining agreement in the nation. There are literally thousands of collective bargaining agreements with "no strike" clauses and with provisions for grievances and arbitration. It is of major importance to determine whether or not an employer, through the guise of an arbitration award, can effectively circumvent the provisions of Norris-LaGuardia as interpreted by *Sinclair*.

Recent Supreme Court decisions strongly indicate in majority, concurring, and dissenting opinions, that the Court is fully aware of the importance of the questions and of the impact of any decision finally settling the problems upon collective bargaining agreements and the parties to those agreements. In the *Philadelphia Marine* case, the two concurring opinions both specifically reserve judgment on the application of *Sinclair* on the issue presented in that case.

In *Avco Corporation vs. Aero Lodge No. 735, Int'l Assn. of Mach. & Aero W.*, ... U.S. ....., ... L. Ed. 2d ....., 88 S. Ct. 1235 (April 8, 1968), majority and concurring opinions specifically reserved the question of the *Sinclair* case's application to the questions raised in the cited case.

The Supreme Court has held that certain strikes, or concerted activity, are not prohibited by a "no strike" clause and that the action by employees engaging in such a strike is a protected activity. *Mastro Plastics Corporation vs. National Labor Relations Board*, 350 U.S. 270, 100 L. Ed. 309, 76 S. Ct. 349 (1956).

The whole question of the applicability of the Norris-LaGuardia Act and *Sinclair* on strikes or work stoppages, allegedly in violation of a contract or of an arbitrator's award, is ripe for decision. Parties to collective bargaining agreements need to know the answer to the questions presented in this petition.

VII.

CONCLUSIONS

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ALVIN J. LISKA,
2-W-23 City Hall,
New Orleans, Louisiana,
Telephone: 529-4311
Attorney for Petitioner,
General Longshore Workers,
I.L.A. Local Union No, 1418.

VICTOR H. HESS, JR.,
1411 Decatur Street,
New Orleans, Louisiana 70116,
Telephone: 949-2742
Attorney for Petitioner,
General Longshore Workers,
I.L.A. Local Union No. 1419

Of Counsel:
LISKA, EXNICIOS & NUNGESSER,
New Orleans, Louisiana.

JACKSON & HESS,
New Orleans, Louisiana.